SUBJECT INDEX

	Page
STATEMENT OF FACTS	1
ARGUMENT	3
No Jurisdiction	3
No Allegations of Negligence	6

TABLE OF CASES

	Page
Atna, The, 297 Fed. 673, 675-676	5
City of Chicago v. Bixby, 84 Ill. 82, 25 Am. Rep. 429, 430, 431	7
Clark v. Chicago, 4 Biss. 486, Fed. Cas. No. 2817	7
Cleveland Terminal Co. v. Cleveland Steamship Co. 208 U.S. 316, 52 L. ed. 508, 511-512	4
Gilliland v. City of Omaha, 89 Neb. 668, 131 N.W. 1055, 1056	7
Miller v. City of St. Paul, 38 Minn. 134, 36 N.W. 271, 272	7
Morgan v. City of Lewiston, 91 Me. 566, 40 Atl. 545, 546-547	7
Plymouth, The, 3 Wall. 20, 18 L. ed. 125	4
Shippey v. Village of Au Sable, 65 Mich. 494, 32 N.W. 741, 742, 743	7
Teager v. City of Flemingsburg, 109 Ky. 746, 60 S.W. 718, 719	7

IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1934

ELTA KENWARD,
Petitioner

vs.

THE "ADMIRAL PEOPLES," and PORTLAND CALIFORNIA STEAMSHIP COMPANY, Claimant,
Respondents

Brief in Opposition to Writ of Certiorari

STATEMENT OF FACTS

This is a proceeding in *rem* brought by appellant to charge a maritime lien on the defendant vessel because of an injury sustained by her on the Admiral Line dock in the City of Portland, Oregon, as she disembarked from the defendant vessel on which she had taken passage from Wilmington, California, to Portland, Oregon.

The fifth article is the material portion of her libel for present purposes. It is as follows:

"At the time and place aforesaid, respondent, its officers and agents, placed or caused to be placed a gang plank leading from one of the decks of said vessel to the wharf, and said gang plank sloped from the ship toward the wharf at an angle of from ten to fifteen degrees. The gang plank was approximately 2 feet in width and 18 feet in length, and was equipped with the usual rope railings which terminated approximately 3 feet from each end of the gang plank. The gang plank was so constructed that when put in place as aforesaid, the level of the plank at the shore end was about 6 inches above the level of the dock, thereby creating a step from the plank to the dock. After respondent's steamship had been docked and the gang plank placed as aforesaid, upon instructions from one of respondent's officers, libelant proceeded along said gang plank toward the dock, and as libelant reached the lower end of said gang plank, being then and there wholly unaware of the step between the lower end of the gang plank and the dock, and there being no warning furnished or given to libelant of the presence of said step, libelant fell from said gang plank and was violently and forcibly thrown forward upon the dock in such manner as to cause the injuries hereinafter set forth. By reason of said fall, libelant sustained a fracture of the neck of the left femur and bruised, tore and injured the muscles, ligaments, tendons and nerves of her pelvic region and lumbar spine."

Claimant filed exceptions to the libel on the following grounds:

"(1) That the facts averred in the libel are insufficient to constitute a cause of suit or action cognizable in admiralty or within the maritime jurisdiction of this court.

"(2) That the facts averred in the libel are insufficient to entitle libelant to a maritime lien on

the Steamship 'Admiral Peoples', its engines, boilers, apparel, etc., or any thereof.

"(3) That the facts averred in the libel are insufficient to constitute a cause of action in *rem* against the respondent vessel aforesaid."

These exceptions were sustained by the District Court both on the ground that admiralty was without jurisdiction and on the ground that the libel failed to state facts sufficient to constitute negligence on the part of claimant. On appeal the decree of the District Court was affirmed, the Circuit Court of Appeals basing its affirmance solely on the ground that admiralty was without jurisdiction to entertain the libel.

ARGUMENT

No Jurisdiction

The decision of the Circuit Court of Appeals was based wholly on the ground that admiralty had no jurisdiction. The meat of Judge Wilbur's decision is found in the following sentences:

> "It is well settled that injuries occurring upon the dock are injuries upon the land and that admiralty has no jurisdiction over the place of injury. The cases in which this principle has been applied are so numerous that we deem it unnecessary to enter into an extended discussion of them. Recent decisions of the Supreme Court (State Industrial Comm. v. Nordenholt, 259 U.S. 263; Smith & Son v. Taylor, 276 U.S. 179; Nogueira v. N.Y., N.H., & H.R., 281 U.S. 128; Employers Liability Corp. v.

> Cook, 281 U.S. 233; Spencer Kellogg & Sons v. Hicks, In re 'Linseed King', 285 U.S. 502; L'Hote et al. v. Crowell, Dep. Comm., 286 U.S. 528; Vancouver S.S. Co. v. Rice, 288 U.S. 445) have so definitely settled the questions involved in this case that it is unnecessary to consider earlier decisions of the lower federal courts which conflict with the decisions of the Supreme Court announced in these recent cases, upon some of which appellant relies."

The rule announced in the cases cited by the Court of Appeals is also declared by the earlier decisions of this Court.

The Plymouth, 3 Wall. 20, 18 L. ed. 125

Cleveland Terminal Co. v. Cleveland Steamship Co., 208 U.S. 316, 52 L. ed. 508, 511-512

The principle for which petitioner contends is that a party leaving a vessel shall be deemed to be on the vessel until the trip from vessel to dock is completed, and that during all of that period the jurisdiction of admiralty attaches. Even if this principle were held to be the law, it would not be sufficient to warrant a decree in favor of petitioner on the allegations of her libel. It appears on the face of the libel that the injury sustained by petitioner was sustained as she fell on the dock, which is admittedly an extension of the land. We call the attention of the court to the following sentence of her libel:

"After respondent's steamship had been docked and the gang plank placed as aforesaid, upon instructions from one of respondent's officers, libelant proceeded along said gang plank toward the dock, and as libelant reached the lower end of said gang plank, being then and there wholly unaware of the step between the lower end of the gang plank and the dock, and there being no warning furnished or given to libelant of the presence of said step, libelant fell from said gang plank and was violently and forcibly thrown forward upon the dock in such manner as to cause the injuries hereinafter set forth."

The principle contended for, however, is announced in only one District Court case which petitioner cites:

The Atna, 297 Fed. 673, 675-676

This is a decision of Judge Cushman, sitting in the District Court for the Western District of Washington. As above stated, there is language in Judge Cushman's opinion which gives some support to petitioner's contention, but the case is widely distinguished from the case at bar on the facts. In *The Atna* the libel was filed to recover for personal injuries sustained by a stevedore who had been working on the defendant vessel in Grays Harbor. When libelant finished his work he left the vessel by a wooden ladder. The ladder was in defective condition and broke while libelant and other stevedores were on it. Libelant clung to a portion of the ladder after the break. The ladder fell on one of the fender logs which was floating on the water, rising and falling with the tide. The fender log was an aid to navigation and was placed by the side of the dock as a protection

to ocean-going vessels when approaching the dock. Although the ladder fell upon the fender log, libelant himself fell into the water. Judge Cushman held that admiralty had jurisdiction.

"This court has so often and so recently determined that admiralty has no jurisdiction of a proceeding to recover damages for an injury consummated on a dock that an additional decision by this court on the above subject would serve no useful purpose.

No Allegation of Negligence

It is alleged in fifth article of the libel that the gang plank was so constructed that when put in place the level of the plank at the shore end was about six inches above the level of the dock, thereby creating a step from the plank to the dock. In the sixth article of the libel negligence is charged on the above construction of the gang plank, and the failure to provide a hand rope or railing extending to the shore end of the gang plank; also on the failure of the vessel to give warning of the existence of the step.

Many cases are to be found in the books wherein the courts have held that it is not negligence to maintain a step six inches or thereabouts in height up or down which foot passengers are obliged to travel, and we believe the law to be well settled that there is no duty

to warn a passenger or pedestrian when he comes to any such step.

Clark v. Chicago, 4 Biss. 486, Fed. Cas. No. 2817

Morgan v. City of Lewiston, 91 Me. 566, 40 Atl. 545, 546-547

Shippey v. Village of Au Sable, 65 Mich. 494, 32 N.W. 741, 742, 743

City of Chicago v. Bixby, 84 Ill. 82, 25 Am. Rep. 429, 430, 431

Miller v. City of St. Paul, 38 Minn. 134, 36 N.W. 271, 272

Gilliland v. City of Omaha, 89 Neb. 668, 131 N.W. 1055, 1056

Teager v. City of Flemingsburg, 109 Ky. 746, 60 S.W. 718, 719

We think this court will find that the District Court did not err in holding that the libel, even if there were jurisdiction in admiralty, was insufficient to state a cause of action against the vessel or her owner based upon negligence.

Respectfully submitted,

W. LAIR THOMPSON,
WALLACE MCCAMANT,
Proctors for Respondents.